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In Pro per

## **STATE OF CALIFORNIA**

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	
For the High Desert Power Project [HDPP]	)	
	)	
_____	)	

### **DIRECT TESTIMONY OF GARY A LEDFORD ON WATER And Related Matters FOR THE HIGH DESERT POWER PROJECT**

Respectfully submitted:

September 15, 1999

\_\_\_\_\_  
GARY A. LEDFORD  
PARTY IN INTERVENTION  
IN PRO PER

## **DECLARATION OF GARY A. LEDFORD**

I, Gary A. Ledford, declare as follows:

1. I am citizen and resident of the State of California, Town of Apple Valley. For at least the last fifteen years I have paid taxes on real estate situated in the High Desert and under the jurisdiction of the Mojave Water Agency (hereinafter "MWA").
2. I intervened in 97-AFC-1 and am a bonafide party.
3. I have lived in the Victor Valley for a period of over 20 years and have built over 700 homes in the Valley, primarily for Senior Citizens over the age of 55.
4. I have also been responsible for several commercial projects in Apple Valley.
5. Over the past 30 years I have broad-based experience in the design and construction business.
6. Over the past 12 years I have been actively involved in the adjudication of water rights in the Mojave Water Agency Boundaries.
7. I have an equity interest in the outcome of the water rights litigation and issues affecting my equitable interests are pending before the California Supreme Court.
8. I became involved in this case as an intervenor when it became apparent that MWA was relying on Energy Commission process to produce a CEQA Equivalent Document for future possible approvals of providing some amount of State Project Water for Evaporative Cooling.
9. I was aware that the evaporative cooling process required the 100% consumptive use of this water.
10. The adjudication which dictated water policy in the MWA and requires curing the overdraft, mandates all producers to reduce pumping or to pay for replacement water.
11. Replacement water is water that is provided to the Basin, to help cure the overdraft.
12. For each acre-foot of water that a producer over produces, he must purchase one-acre foot of water at an assumed 50% consumptive use rate. This in theory allows 50% of that acre-foot of water to recharge the basin.

13. The proposal by High Desert Power Project to use "evaporative cooling", with State Project Water as its sole source, denies the taxpayers who have paid for the facilities over the past thirty years, the right to receive the benefit from those payments.
14. In fact CEC staff's testimony states, there is not enough SWP Water to cure the overdraft. However, the CEC proposes to allow the HDPP, subject to local political approval to continue the overdraft's existence and use 20% of the available replacement water for evaporative cooling where there is no benefit to the basin.
15. The cumulative impacts associated with the use of 4,000-acre feet of consumed water in cooling towers, when the alternative for Wet/Dry Cooling would mitigate the water impacts to a level of non-significance is virtually overlooked even though many of the CEC staff have recommended the Dry Cooling Alternative.
16. CURE states that Wet Cooling with condensers has the capacity to place chemicals into the atmosphere which may not be mitigatable to a level of non-significance. The CURE statement is not addressed or responded to by the Applicant or Staff.
17. CEQA requires a response to each comment made by the parties and participants in a public decision. The Energy Commission process has not responded to issues raised by this intervenor and CURE. The siting process is failing to comply with the requirements of providing an impartial, informative document, in a complete and concise form, circulated for a period of at least 30 days prior to a hearing as required by CEQA.
18. Attached is my Direct Testimony, which I believe is supported by the record and substantial evidence and such additional testimony and/or exhibits to be presented at the hearing.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this \_\_\_\_\_ day of September 1999, at Apple Valley, California.

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Gary A. Ledford  
Taxpayer

# DIRECT TESTIMONY OF GARY A LEDFORD ON WATER FOR THE HIGH DESERT POWER PROJECT

## INTRODUCTION

For more than a year this intervenor has attempted to identify with a single and focused environmental issue to be addressed by HDPP and the CEC Staff. This is the issue of Water, its relationship to the proposed use by HDPP of this valuable resource and more importantly how the proposed approval fails to conform to the Judgment on Water Rights. To date none of the issues raised have been addressed. In its Errata filed with this commission on September 2, 1999, CEC Staff states:

"Mr. Gary Ledford has provided written rebuttal testimony, comments on the proposed conditions of certification and oral comments at the workshop which are not reflected in the attached errata."

While it is fully acknowledged that the ground water basins are in a state of severe and critical overdraft. None of the major municipal water producers have done anything to correct their individual overproduction of their wells, and apparently they do not intend to do so without a direct order from some court. Currently the MWA, along with the municipal producers are requesting that the Supreme Court hear their arguments on the Merits of the Judgment of the Physical Solution for the balancing of the basin[s] and curing the overdraft. The MWA's opening Brief to the California Supreme Court gives us a view of the problem of "overdraft" as presented to the court:

"In 1990, water producers within the Mojave River Basin (an area of approximately 3,600 square miles and home to about a quarter of a million people) were confronted with an alarming water supply problem. Since the mid-1950's, the annual demand for water from the Basin' had exceeded the annual natural supply - resulting in a continuous and ever increasing "overdraft." **Rapid urban development in the 1980's had exacerbated the problem by dramatically increasing the demand on the already overdrafted system**". [bolding and underling added by Ledford for emphasis]

"By 1990 the cumulative overdraft on the Basin exceeded one million acre feet. If the situation is allowed to go unchecked, **the result will be ground subsidence, decreased water quality, increased costs to pump from constantly increasing depths, destruction of the underground storage capacity, and, ultimately, complete exhaustion of the underground supply**." [bolding and underlining added by Ledford for emphasis]

Clearly the City of Victorville and the Victor Valley Water District concurred with this analysis as can be seen by their signature on the Brief

**Thomas P. Mc Guire for the City of Victorville and Victor Valley Water District**

The adjudication was started to determine vested water rights to "Natures Free Production", which the parties were advised was recharged into a common pool of water. (Referred to in the adjudication as the TeaCup Theory). The "theory" was, since all producers in the common pool were equally responsible for the overdraft, so everyone was to share equally in the cure. New production on the other hand was required to pay the full price to bring in new water into the basin[s]. The Fourth Circuit Court stated it clearly, "**Equity dictates that all persons in the same position be treated alike.**" (Civ. Code, § 3511 [**"Where the reason is the same, the rule should be the same."**]). Farmers were promised that over a five-year period they would be paid handsomely for their "**Free Production Allowance**". They could make more money selling or leasing their water than they could farming. Yet five years after the adjudication went into effect, many farmers still cannot sell their water, or if they can it is at bargain basement prices.

"The trial court Judgment is supposed to provide an equitable mechanism, a "Physical Solution," for allocating pumping rights and financing the purchase of imported water supplies essential to the ongoing enjoyment of all classifications of water rights in the Basin."

Within the past 90 days a long awaited study of the migrating water has been released by the USGS, at this writing the written report is still not available, but several public meetings have been made by the USGS. The result is that the vast majority of the municipal wells in the Alto Basin the where HDPP project is proposed, pump only ground water. There is no common pool. The Natural Recharge Water goes directly into the Main Stem of the Mojave River, in the Flood Plain Aquifer. That means that all of the natural water belongs only to the overlying producers, who enjoy this "**Free Production**" of nature's water. In order for a municipal producer to obtain a legal right to this water they must purchase the right. The Regional Aquifer is not naturally recharged.

In the case of the Victor Valley Water District, of the 33 wells they have only two that are potentially in the FloodPlain Aquifer, and both of them were drilled after 1990. CEC staff states that all "**. . VVWD's water supply is entirely from groundwater.**" Each and every year of production the Victor Valley Water District mines, all of their water from their wells. Each year the hydrographs indicate that their well levels go down.

The only way to cure the overdraft is by extensive recharge using imported State Water Project water..

## **ISSUES TO BE ADJUDICATED BY THE COMMISSION**

<b>1.</b>	Can the Energy Commission approve the Use of State Water Project Water, for "Cooling Towers", when the entire MWA Entitlement will not cure the existing overdraft?
<b>2.</b>	Is the Energy Commission [As the Lead Agency] required under CEQA to study and comment on the " <b>Cumulative Impacts</b> " of the proposed HDPP project based on the use of the " <b>Overdrafted Water Basin</b> ", which the CEC admits is forecasted to continue to be mined over the next 30 years?
<b>3.</b>	Do existing taxpayers own the existing entitlement to all of the MWA water unless and until the overdraft is cured?
<b>4.</b>	If "Banking" were approved would HDPP have to Bank two acre feet of water for each acre foot to be consumed in the Cooling Towers, in order to equitably comply with the intent of the Physical Solution, wherein all "Producers" must buy Replacement Water on a two for one basis?
<b>5.</b>	Does the use of SWP Water for the 100% Consumptive use of water comply with Water Resources Control Board Resolution No.75-58?
<b>6.</b>	Does the use of SWP Water for the 100% Consumptive use of water comply with the California Constitution Article X, Section 2, referring to Highest and Best Use of Water?
<b>7.</b>	Will the California Supreme Court Make a Different Ruling than the Kaiser Court or the 4 <sup>th</sup> Circuit?
<b>8.</b>	Is Dry Cooling a Viable Alternative?

### **1. Can the Energy Commission approve the use of State Water Project Water for "Cooling Towers" when the entire MWA entitlement will not cure the existing overdraft?**

If High Desert Power Project were allowed to Purchase 4,000 Acre feet of SWP water for Cooling Towers with a 100% of consumptive use rate, the High Desert Power Project will have a negative environmental impact on the cumulative ability of the MWA to cure the overdraft and manage the water and water resources of the High Desert. Approval the project in an area of severe and chronic overdraft by a Water Agency that itself has failed to mitigate its overproduction of its well fields will only continue to exasperate the issue.

The overdraft began in the Basin in the mid 1950's. As a result of the overdraft, well levels and water quality declined significantly throughout the Basin. The safe yield of the

Basin has been estimated as approximately 75,000 acre feet annually. In 1990, the safe yield was exceeded by approximately 63,000 acre feet. The trial court found that all water producers had contributed to the overdraft.

"Overdraft" occurs if average annual consumptive use of water from a basin exceeds its safe yield plus any temporary water supply surplus. "Safe yield" is defined as the maximum quantity of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result. The phrase "undesirable result" refers to a gradual lowering of the groundwater levels resulting eventually in depletion of the supply. (*San Fernando, supra*, 14 Cal.3d at pp. 278-281.)

The existence of the overdraft has long been a matter of public knowledge. Bulletin 84 of the California Department of Water Resources, published in 1967, described in detail the nature and scope of the overdraft.

The dangers of overdraft have been recognized for many years in areas throughout California, as well as the need to address that problem in order to protect water rights and protect the public interest in the water supply.

Full importation of MWA's SWP entitlement of 75,800 acre feet of water would significantly lessen the amount of overdraft within the basin, however it is never anticipated that MWA will receive more than 70% of its total entitlement in any one year. Although the full 20% rampdown of the basin has been achieved, the MWA has failed to collect any money from VVWD under the judgment to purchase "Replacement" water to recharge this chronically overdrafted basin. The VVWD, who proposes to supply water to this project, produces only ground water. This means that the VVWD is mining water that is not naturally.

In 1991, an Environmental Impact Report was prepared for the transition of George Air Force Base. That EIR identified substantial Environmental Impacts associated with the Development and Redevelopment of the Base and its surrounding property. MWA sued VVEDA and entered into a settlement agreement. That agreement states in part:

Section 5. Water Issues: With respect to the water issues. . . the Parties hereby agree as follows:"

"a. VVEDA shall comply with the California Environmental Quality Act ("CEQA"). . .and **shall evaluate each individual project to be undertaken** in connection with the implementation of the 1993 Redevelopment Plan and **which may in any way impact upon water resources, directly or indirectly**. For its growth inducing potential and its impact on local water resources. VVEDA shall not approve any project unless available water resources for the project are adequate to meet projected demand of the project."

"b. To the extent permitted by law, VVEDA shall seek to become a party in the Mojave River Adjudication, Riverside Superior Court Case No. 208568, if it becomes a water purveyor and in such event agrees to be bound by any judgement which is entered including any physical solution is finally agreed upon by the Parties in settlement of the water adjudication litigation"

In December of 1992 MWA required additional comments be added to the EIR:

At page 94: " . . .Of the total operational storage capacity, approximately 881,000 acre-feet remains in storage, with the remainder have been previously extracted."

At page 100: "The City and/or the purveyor should participate in the annual cost to the Mojave Water Agency for the purchase and delivery of imported supplemental water to offset the increase to overdraft with will result from this project."

"Delivery of imported water can be accomplished through the oversized "reach one" of the Morango Basin Pipeline, which is currently under construction. Reach one will include a turnout allowing the discharge of up to **36,000 acre feet of water per year for recharge to the Upper Mojave River near the Rock Springs Road Crossing**"

It is abundantly clear that MWA intended that all water coming into the basin, was going to be used for direct recharge and that VVEDA would be required to comply with the terms of the judgement.

In a sworn declaration before the Superior Court for approval of the Interlocutory Judgment Mr. Larry Rowe testified, that in San Bernardino Case No: 247481, Judge Kruge found and held in 1988 that:

". . the MWA could not contract away a portion of its State Project Water Entitlement to entities within the Mojave River Basin **until it addressed and solved** {emphasis added} regional water management concerns"

In a deposition taken on October 6, 1994, Mr. Caouette testified when asked if VVEDA would get a "Free Production Allowance" in the adjudication? He replied:

"If VVEDA became a new producer and water purveyor, I don't think they would have a free production allowance. **They would all be new production subject to assessment.**"

In the same deposition, when asked if the Victor Valley Water District had available water for new developments, including VVEDA, Mr. Caouette testified:

"Once again, the terms of the judgment which would require them to purchase **replacement water.**" Page 27 lines 14 - 15.



"Water that would be available to them under the Stipulated Judgement through the purchase of **replacement water** above their free production allowance." Page 32 lines 2-5.

"Any new development over the overdraft would be - - would result in an increase to the overdraft" page 64 lines 14 - 16.

In the same deposition when asked how will balance be achieved, Mr. Caouette testified:

"Through the **replacement water** purchase". Page 118 lines 10 - 16

Replacement Water Assessments is described in the Judgement as follows:

"Replacement Water Assessments shall be levied against each Producer on account of such Producer's Production, after any adjustment pursuant to Paragraph 24(q), in excess of such Producer's share of the Free Production Allowance in each subarea during the prior Year."

Paragraph 24(q) states:

"If the Watermaster determines, using the Consumptive Use rates set forth in Exhibit "F", that a new Purpose of Use of any Producer's Production for any Year has resulted in a higher rate of Consumption than the rate applicable to the original Purpose of Use of the Producer's Production in the Year for which Base Annual Production was determined, Watermaster shall use a multiplier (1) to adjust upward such production for the purpose of determining the Producer's Replacement Water Assessment and, (2) to adjust upward the Free Production Allowance portion of such Production for the purpose of determining the Producer's Make-up Water Assessment. The multiplier shall be determined by dividing the number of acre feet of Consumption that occurred under the new Purpose of Use by the number of acre feet of Consumption that would have occurred under the original purpose of use for the same Production." Page 33 - 34 of the Judgement

Based on LORS, the CEC cannot adopt conditions to approve the use of SWP water unless and until the overdraft has been cured and there is a demonstrated surplus amount of water available.

**2. Is the Energy Commission [As the Lead Agency] required under CEQA to study and comment on the "Cumulative Impacts" of the proposed HDPP project based on the use of the "Overdrafted Water Basin", which the CEC admits is forecasted to continue to be mined over the next 30 years?**

The CEC Staff has advised us:

"... the cumulative impacts of groundwater use in the Mojave River Groundwater Basin (Basin) have caused overdraft of the region's aquifers and the progressive decline in riparian habitat along the Mojave River. This overdraft problem is severe and at present is continuing."

"Base flow of the Mojave River, measured at the Lower Narrows, is currently 50 percent below the minimum flow of 21,000 acre-feet/year decreed by the court-approved judgment resulting for the adjudication of the Basin. In addition, even the extremely low current rate of base flow of the Mojave River is tenuous. Some of the discharge from the VVRA wastewater treatment plant, which comprises most of the current flow in the river, may soon be diverted for other purposes (Bilhorn 1999; Cauoette 1999). **Therefore, there is a real potential for the project to contribute to a significant cumulative adverse impact to local groundwater supplies and base flows within the Mojave River.**"

The more fundamental question is whether to commit 4,000 acre feet of consumptive use water to "Cooling Towers". The environmental impact is that in this area where the population will only grow with new water, 4000 acre feet of consumptive use, is equal to 8,000 new households, or a population of up to 32,000. This population will purchase one billion dollars in new homes [8,000\*125,000], paying at least twice the amount of taxes of the power plant. They will create 12,000 jobs, add numerous industrial parks and commercial developments. The cumulative impacts of taking 4,000 acre feet of any entitlement to water whether SWP or otherwise in the long term planning of the Future of the Victor Valley is mandated for consideration.

**3. Do existing taxpayers own the existing entitlement to all of the MWA water unless and until the overdraft is cured?**

**The MWA's mission as provided under the ACT is stated clearly in information published by the Agency:**

"The Mojave Water Agency (MWA) was founded July 21, 1960, due to concerns over declining groundwater levels. The Agency was created for the explicit purpose of doing any and every act necessary, so that sufficient water may be available for any present or future beneficial use of the lands and

inhabitants within the Agency's jurisdiction."

As a state water contractor, MWA is entitled to receive an annual allotment of up to 75,800 acre feet of water from the State Water Project via the California Aqueduct.

"The imported water supply is crucial to the area's survival, because local aquifers have been in overdraft since the early 1950's, according to recent studies. For the past four decades, residents have been using more water than is replaced naturally."

The Agency's essential mission was strongly reaffirmed with the conclusion of the Mojave River Adjudication. The Court's ruling notes that the Agency area continues to be in severe overdraft. The Court ordered the Agency to seek sources of water, including supplemental water, and to deliver that water in the most effective fashion to ensure the quality of life within its boundaries. The judgment also mandated the MWA to continue its traditional role of encouraging conservation.

### **MOJAVE BASIN AREA WATERMASTER**

A "Watermaster" is a person or persons appointed by a Court to administer the terms of a Court Judgment. The Mojave Water Agency was appointed as the initial Watermaster by the Riverside County Superior Court to implement the Mojave Basin Area Judgment, which apportioned available water production rights within the overdrafted Mojave River Basins. The Watermaster implements a physical solution developed for the adjudication entered by the Court. . "

### **What are MWA Debt-1 and MWA Debt-2 on my property tax bill?**

The Mojave Water Agency (MWA) has the authority granted under Section 97-16 of the California Water Code to levy property taxes, collected through the San Bernardino County tax rolls. The taxes collected are mostly used to pay back the bonds and notes issued by the State of California to build the State Water Project (SWP) including the California Aqueduct and to pay the Agency share of SWP operating costs.

The first tax, MWA Debt-1, is permanently set at .1125 cents per \$100 of assessed valuation of land only. The tax rate can never rise on this particular tax; however, the amount of tax can rise based on any increase in assessed valuation of your property. This tax helps to fund the capital, interest, transportation and construction components of the State Water Project charges.

The second tax, MWA Debt-2, is levied to supplement the first tax assessment, pay Agency debt service and to also fund the MWA administration. This tax rate has no cap, and the rate can be raised by a majority vote of Board of Directors. It is currently set at .055 cents per \$100 of assessed valuation on land and improvements. These funds are used mostly for funding additional State Water Project costs for operations, repairs and maintenance, Agency water purchases, Agency Administration, and the debt incurred to construct facilities

and pipelines and to purchase additional entitlement water. (Prior to 1997 the Agency was only entitled to purchase 50,800-acre feet of water from the State Water Project. In 1997, the Agency purchased the right to an additional 25,000-acre feet of water, giving the Agency the capability to purchase and have delivered 75,800-acre feet of water. COP's were issued to pay these costs and their debt service is being paid from MWA Debt-2.)

**Why do I pay taxes to the Mojave Water Agency, if I get my water from a well or a water company?**

MWA Debt-1 and MWA Debt-2 property taxes are assessed on all property within the Mojave Water Agency boundaries. All property within the 4,900 square miles of the Agency boundaries benefits from the Agency's ability to import water. The Agency imports water through the California Aqueduct to recharge the groundwater from which local water companies and other well owners derive well water for all uses including domestic, agriculture and industrial.

**4. If "Banking" were approved would HDPP have to Bank two acre feet of water for each acre foot to be consumed in the Cooling Towers, in order to equitably comply with the intent of the Physical Solution, wherein all "Producers" must buy Replacement Water on a two for one basis?**

While this issue will be the subject of much debate, the equitable principals of the adjudication was that every producer be treated alike. If the VVWD is allowed to take SWP water for an independent 100% consumptive use project, this in and of itself is precedent setting and would prevent the ability of the MWA to fulfill its obligations under the terms of the judgement. The argument that MWA is not purchasing its entitlement of water anyway and therefore someone else should be allowed to purchase it only flies in the face of the facts that to the MWA has not fulfilled its mandate. It was said clearly by the counsel for the City of Barstow. **"Water is a matter of money in California".**

The issue before the commission is essentially mute if the commission can determine that MWA cannot meet its obligations to cure the overdraft even using all of its entitlement water. On the other hand if the commission is required to determine if the "laws, rules and ordinances" are being complied with, then this provision must be studied and addressed as a part of the environmental analysis.

**5. Does the use of SWP Water for the 100% Consumptive use of water comply with Water Resources Control Board Resolution No.75-58.**

"State Water Resources Control Board Resolution 75-58, discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources, such as wet/dry cooling. . . .particularly in water-short areas."

This Intervenor believes that the future growth of California is dependent on State Project Water and that 100% of use is contrary to Resolution 75-58.

**6. Does the use of SWP Water for the 100% Consumptive use of water comply with the California Constitution Article X, Section 2, referring to Highest and Best Use?**

*The California Constitution Mandates That Beneficial Uses Of Water Resources Be Maximized!*

The overriding policy of the State of California is to maximize the beneficial uses of its scarce water resources. This policy is expressed in Article X, Section 2, of the California Constitution, which states in pertinent part:

"It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare...."

Since the adoption of Article X Section 2, of the *California Constitution*, courts have both the power and the duty in water rights cases to admit evidence relating to possible physical solutions, and if none is satisfactory, to suggest a physical solution on their own. (*City of Lodi v. East Bay Municipal Utility District (1936)* 7 Cal.2d 316, 341.) See Section IV, A. at p. 16, *infra*, for discussion of Article X, Section 2.

**This Constitutional provision has been interpreted to mean that: "Public interest requires that there be the greatest number of beneficial users. . .".**

This provision was adopted in 1928, originally numbered as Article XIV, Section 3, in response to and to overrule the opinion in *Herminghaus v. Southern*

*California Edison* (1926) 200 Cal.~81, in which the Court had held that holders of riparian rights had the right to use as much water as they wished for riparian purposes, and that appropriative rights were subordinate to those riparian rights regardless of the reasonableness of the riparian use.

## **7. Will the California Supreme Court Make a Different Ruling than the Kaiser Court or the 4<sup>th</sup> Circuit?**

According to MWA as of 1990, the amount of water produced by overlying uses alone exceeded the safe yield by approximately 39%. In other words, even if all of the use by cities and non-overlying rights holders had been completely eliminated, the overlying users, such as the Cardozo Parties, would still have been required to cut back their production by 39% in order to terminate the continuing overdraft.

The Judgment, in contrast, provides that after the end of the first five year period, each party could still pump up to 80% of its pre-1990 highest production amount, without having to pay replacement assessments. Each party can in fact pump more water, since the Judgment provides a mechanism for the purchase of supplemental water. "A fundamental premise of the Physical Solution is that all Parties will be allowed, subject to this Judgment, to produce sufficient water to meet their reasonable and beneficial use requirements."

CURE also considered different estimates of the period of groundwater pumping. As mentioned above, the Bookman-Edmonston (1998b) studied used three years as a worse case. The Geomatrix (1998) study did as well, but pointed out that this time estimate does not reflect the full effect of groundwater pumping over the life of the project. Outside of the Mojave River Alluvial Aquifer, groundwater extraction exceeds recharge resulting in lowered groundwater levels over time. Without additional on-site recharge, even intermittent pumping by the project would be additive, leading to a long-term drawdown of the aquifer, because of incomplete groundwater level recoveries (Geomatrix 1998; Fox 1998; Martin 1998). At the very least, HDPP will be pumping groundwater one month each year while repairs are made to the California Aqueduct. With no other interruptions in SWP deliveries, this still represents two and half years of pumping over the assumed 30-year life of the project. Additional pumping will be dictated by the availability of SWP water, if the MWA is required to use all of the entitlement and supplemental water it can deliver to cure the overdraft as mandated under the MWA Act and the Adjudication, then no water would be available from the SWP. Continuing issues in the Bay Delta also make the reliability and cost of SWP water uncertain. According to the MWA Regional Water Plan:

**"Consistent with its legislative charge and with the intent of the Mojave Basin adjudication, the basic objective of MWA is to develop and implement a plan which would eliminate the overdraft of the ground water basins"**

**“MWA’s SWP water supply is projected to yield an average of approximately 40,000 acre-feet per year. This even with full utilization of its SWP water, MWA will require additional supplies or reduction in demand on the order of 53,000 acre-feet per year by the year 2015 in order to eliminate a total overdraft of approximately 93,000 acre-feet”**

The fundamental issue of the overdrafted water basin has not been addressed. The MWA cannot supply water to HDPP except on an annual basis from surplus water after curing the overdraft. The MWA ACT, its adopted Water Management Plan prepared by the Bookman Engineering Firm and the Physical Solution of water rights mandates that the basins be brought into balance. The issues are not settled and the Supreme Court may make further rulings.

## **State Water Project**

As noted above, the HDPP (1997a; Bookman-Edmonston 1998a,b) intends to use State Water Project water for the power plant water supply whenever this water is available. There is not a water purveyor that has provided to the Energy Commission an unconditional “Will Serve” letter, indicating that it has the necessary water rights to provide an uninterrupted water supply for this project. The evidence in this case shows that the VVWD is going to continue to pump its 33 wells until they go dry.

Total MWA entitlement to SWP water is approximately 50,000 acre-feet, plus a further possibility of 25,000 acre-feet of Berrenda Mesa Water. In the Berrenda Mesa Public Bond Indebtedness Documents, the following information was disseminated to the Public:

"The Agency [MWA] has responsibility to alleviate overdraft. . . "

"Pursuant to its responsibilities under the courts order, the Agency has entered into an agreement with Berrenda Mesa Water District. . . "

MWA's estimate of 70%, appears to be on the optimistic side. CEC Staff tells us that the SWRCB (1998) and DWR estimates that the SWP has a 65 percent chance of delivering 3.25 million acre feet and an 85 percent chance of delivering 2.0 million acre feet in any given year under 1995 water demands. The calculated average annual delivery during a repeat of the 1928-1934 drought under these assumptions is estimated by SWRCB (1998) to be about 2.1 million acre feet per year. For year 2020 estimated demands, the model shows that full deliveries (4.2 million-acre feet) will occur less than 25 percent of the time, but that approximately 3 million acre feet will be available 70 percent of the time.

Given the uncertainty, MWA (1994; 1998) CEC Staff's best case estimate of the average of 70 percent of the agency's SWP entitlement will available, is even unlikely. Using the Basic contract and Berrenda Mesa purchase, the MWA's best case, can only

assume it can deliver approximately 53,000 acre feet of water annually. Certainly not nearly enough water to cure the overdraft.

**The unknown factor is the actual amount of SWP water MWA will require for addressing the overdraft. The adjudication (1995) clearly identifies the reduction in groundwater pumping and the importation of water as the key elements in addressing the overdraft.** While the adjudication, is silent on the amount of water that needs to be recharged, it mandates the balancing of the Water Basin and the cure of the overdraft as the MWA's and Watermaster's top priority as can be seen in the Regional Water Management Plan.

**A firm estimate of production safe yield has also not been made and must wait until more hydrologic information is available (Caoutte 1999).**{bolding and Underlining added by Ledford} This estimate also assumes SWP water importation will sharply increase after the year 2000 due to the fact that most FPAs that can be transferred will have been transferred and, therefore, the amount of payments to MWA for makeup water will increase. **It should be noted that during SWP water shortages, use of SWP water for recharge, if deemed necessary by the watermaster, will take priority over non-recharge uses (Cauoette 1998b).** The availability of such water in the future is not known.

Based on the Regional Water Management plan the Staff has no way to assume that SWP water will be available to the MWA to address the overdraft. The evidence is that presently MWA is lacking water to cure the overdraft. Lacking information that dictates a specific amount of the MWA's SWP entitlement is necessary to addressing the existing overdraft, **CEC Staff cannot argue that all of the imported water is necessary to address the overdraft and none would be available for the project.**

Future conditions may change, there is no guarantee that SWP water will be allocated to the HDPP project. Court decisions about the adjudication, or competition for SWP water may limit the availability of this water. SWP water from MWA must be applied for each year. Clearly, Ordinance No. 9 was adopted to provide water on a single year basis to allow decision-makers as much flexibility in allocating what may become a scarce resource as possible.

## **THE ENVIRONMENTAL ISSUE**

The environmental impact is that the proposed water purveyor whether VVWD or the City of Victorville, is continuing to overdraft a water basin. This fundamental negative impact on the environment cannot be exacerbated by this project, without the project coming under the jurisdiction of the judgment and the Regional Water Management Plan. Since the document the CEC will produce must be an equivalent document under CEQA all of the impacts associated with the project and the commutative impacts must be addressed and mitigated, that includes the regional overdraft. A Water Purveyor who has not cured its own environmental issues of overdraft, cannot use SWP water, 100% consumptively for a new project.



It is inherent on the CEC as the lead agency in this process that the subordinate agencies, in this case the MWA, VVEDA, VVWD or the City of Victorville can cure their own in-house water problems before relying on SWP water for new projects, where there is no benefit to the basin.

Staffs position that “Given the nature of the competitive market, one assumes that the liability of the project not operating due to no water rests with the project owner and not with society”, is untenable, it is the Energy Commission’s responsibility as the lead agency to insure that the law is complied with.

## **Well Interference**

Staff and CURE [Fox] also considered the potential for well interference between the proposed HDPP wells and the local production wells. Well interference is the result of overlapping drawdown from two or more pumping wells. Wherever the drawdown from separate wells overlaps, the drawdown is compounded, groundwater levels are lower and the cost for pumping lift increases. The magnitude of the impact of well interference depends on the number and proximity of the wells, the rate of pumping, and the physical parameters of the groundwater system. **Staff analyses indicate that well interference would occur between the proposed HDPP well field and nearby water supply wells.**

HDPP's proposed wells would be located within a VVWD planning area referred to as VVWD Pressure Zone 2 (Bookman-Edmonston 1998a). **There are currently a total of 33 production wells within the vicinity of the proposed HDPP well field, including one VVWD well located within a one-mile radius of the proposed wellfield and ten VVWD wells are within a two-mile radius of the wellfield. Two wells, installed for the Bureau of Prisons Facility on the SCIA and which is still under construction, are also within a two-mile radius of the proposed wellfield. Twenty additional wells are within a three-mile radius of the proposed wellfield, including eight VVWD wells, six City of Adelanto wells and six former GAFB wells. As part of the base closure, the GAFB wells are to be turned over to the City of Adelanto.**

As noted above, groundwater essentially supplies all water used within the HDPP Project area. There is a significant difference between the “Ground Water” being mined by the Victor Valley Water District and nature’s “Free Water”, which annually recharges the Mojave River alluvial Aquifer. The Mined Ground Water cannot be replaced on an annual basis and the continued mining of these 33 wells will continue to degrade the water quality in the vicinity. Further at some point in the near future subsidence will begin to occur.

HDPP's annual water use would be 4,000 af, which would represent an increase of almost 25 percent over the VVWD's existing water demands. More importantly it is 40% more than VVWD allocated FPA, for one single project to use 100% consumptively. In 1994-1995, water demand within the VVWD Pressure Zone 2 was 10,458 gpm while supply was only 7,207 gpm. Furthermore, this is the area the district anticipates the largest amount of growth over the next 15 years. Pressure Zone 2 has seen the greatest population growth over the last ten years of any area within the VVWD boundary (So 1998). This

only indicates more wells with the cone of depression increasing. As of yet the staff has not addressed by modeling the cumulative impacts of this continued pumping.

Well interference would be the largest in nearby wells during the time the HDPP wells were actively pumping. Drawdown from a pumping well forms a cone of depression, which radiates out from the well like a pressure wave, decreasing in magnitude with distance from the well. The specific magnitude and rate of transmission of the drawdown impacts would depend on groundwater system parameters in the area of the project. The impacts of the project pumping on groundwater levels were evaluated using a 3-dimensional groundwater model, based on the best current estimates of the groundwater system parameters. The result of this evaluation is described below in the section entitled Quantitative Analysis of Project Impacts. **Given the proposed location of the HDPP well field, the operational pumping requirements and the available information on aquifer conditions, some degree of well interference with nearby production wells during HDPP pumping periods would be unavoidable.**

## **8. Is Dry Cooling a Viable Alternative?**

Based on the evidence in this case as provided by CURE, Ledford and the MWA, the following determinations in relation to Wet Cooling vs. Dry Cooling should be made.

1. HDPP has failed to demonstrate that Dry Cooling is not a viable alternative.
2. Many projects are now being approved in California require Dry Cooling.
3. Projects in similar climates and elevations are now operating using Dry Cooling
4. The unrefuted testimony and exhibits demonstrate that HDPP project as proposed will potentially result in significant impacts on water resources. In addition, State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources. Based on these findings, Several CEC staff members have identified that dry cooling or wet/dry cooling is feasible and the preferred alternative to the use of fresh inland water waters for HDPP cooling. Several CEC Staff members have recommended that Dry Cooling be implemented as it will mitigate to a level of non-significance water resources. These CEC Staff member testimony is as follows:

**A.** **Power Plant Efficiency - Steve Baker:** "While utilization of dry cooling would yield a small drop in efficiency, the benefits of dry cooling in terms of water supply outweigh any such disadvantage."

**B.** **Waste Management - Ellen Townsend-Smith:** The State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages. . Or other non-potable water sources. The policy also requires the evaluation of dry cooling and wet/dry

cooling as a means of water conservation. No new conditions of certification will be proposed by staff for waste management to mitigate the effects of either dry or wet/dry cooling alternatives.

- C. Power Plant Reliability - Steve Baker:** As a part of staff's analysis of soils and Water Resources, staff identified that the project as proposed could potentially result in significant impacts on water resources. In addition, State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources. Based on these findings, staff has identified that dry cooling or wet/dry cooling may be feasible alternatives to the use of fresh inland water waters for HDPP cooling. Any reliability impacts on the electric system due to reduced availability on hot days should be insignificant.
- D. Public Health - Obed Odomelam:** The fresh water conserving policies of the State Water Resources Control Board points to Dry Cooling as an appropriate Alternative to wet cooling in power plants. The Commission staff has noted this fact in identifying dry cooling as appropriate for the proposed project.
- E. Noise - Steve Baker:** As a part of staff's analysis of soils and Water Resources, staff identified that the project as proposed could potentially result in significant impacts on water resources. In addition, State Water Resources Control Board Resolution 75-58 discourages the use of fresh inland water for power plant cooling and encourages the use of wastewater or other alternative non-potable water sources. Based on these findings, staff has identified that dry cooling or wet/dry cooling may be feasible alternatives to the use of fresh inland water waters for HDPP cooling. The potential for increased cooling tower noise emissions, however is inconsequential for the HDPP.
- F. Visual Resources - Gary D. Walker:** The use of wet/dry cooling would reduce but not eliminate the potential for cooling tower plumes . . . Overall the difference in visual impact compared to the proposed project would be negligible.

### **Significance Criteria: Definition of Negative Impacts**

The significance criteria for evaluating environmental impacts of the HDPP must take into account, the regional significance of the Project, with its "Cumulative Impacts" and "Growth Inducing Impacts", including:

- a. the acute overdraft of the region's aquifers;
- b. the progressive decline in riparian habitat;

- c. the ongoing reduction of Mojave River base flows in the vicinity of the project and to downstream users;
- d. the extreme uncertainty surrounding the long-term availability of water in the vicinity of the project
- e. the severity of the current and projected future groundwater situation;
- f. use of SWP Water will create significant adverse environmental impacts or exacerbate existing unmitigated environmental impacts that have been caused by the proposed purveyor of water;
- g. proposed water banking water will be used by adjacent wells in the overdrafted basin and there will be no way to account for the water loss to other wells;
- h. The project well field will exacerbate the cone of depression with the cumulative pumping and overproduction in this pressure zone, lower water levels, creating a reverse pressure away from the river. This will cause negative impacts to the local base flow of the Mojave River;
- i. the project's cumulative impacts with current overproduction and future proposed overproduction of non replenished ground water will cause negative impacts on Mojave River flow that will affect downstream communities;
- j. That the project will cause negative impacts to groundwater levels in the Mojave River Alluvial Aquifer, in that the failure of the Mojave Water Agency to cure the overdraft in accordance with the Judgment After Trial.
- k. The adopted Water Management Plan mandates the overdraft be cured first, before there is surplus water.
- l. CEC Staffs admits there is not enough water to fully cure will prevent the proposed 4,000 acre of water being recharged into the Alluvial Aquifer.

## **FINDINGS OF FACT**

1. The project's potential demand for water affects surface and groundwater supplies in an area of severe groundwater overdraft, not subject to any natural recharge;[CEC Staff] [MWA] [EIR - George reuse] [Fox- CURE] [Ledford]
2. Groundwater overdraft within the Alto Subarea in 1990 was 19,900-acre feet per year. [MWA]
3. If Wet Cooling is used 100% of the water used in the Cooling Towers will be consumptively Used.[CURE][CEC Staff][Ledford][Badly Mesa]
4. The use of Water for Cooling Towers in a Critically Overdrafted Ground Water Basin, when the overdraft has not be cured is not the Highest and Best Use of Water.[Ledford] [VVWD Brief to supreme Court] [Article X Section 2 California Constitution]
5. According to the evidence before this commission there will not be enough Water available from the SWP to meet the demands of curing the overdraft and future growth in the Victor Valley based on existing MWA Contracts.[MWA] [Beebe] [Bookman-Edmonston] [Malcolm Pirnie] [Decision 1619] [Judgement after Trial]
6. Part of the Cure to the Overdraft in the Judgment for the Adjudication of Water Rights is a "Two for One" replacement of water. [Dendy] [Hansen] [Principals of the Physical Solution] [Ledford] [Replacement Water Defined in the Judgment]
7. The High Desert Power Project may be allowed to use State Project Water, on an interim and interruptible basis only if it is obligated to pay the Two for One replacement cost.[MWA] [Rowe] [Ledford] [Badly Mesa]
8. The Commission has the obligation as the Lead Agency to insure that the Victor Valley Water District has the ability to serve this project, and has provided un-refutable evidence that it has cured it's already serve overdraft condition. [Settlement Agreement with MWA/VVEDA]
9. The commission cannot approve a project that does not have a fully unconditional "Will Serve" letter to provide uninterrupted water for this project. The contrary is to submit either the project to potential failure or the public to environmental consequences as the courts wrangle whether or not the plant should be shut down. [Settlement Agreement MWA/VVEDA]
10. The commission should mandate "Dry Cooling" for all future projects in California, because the cumulative impacts of evaporating water to the atmosphere and denying water to the residents of this state is not the Highest and best Use of Water Resources.

11. The evidence in this case shows that "mining" of water by VVWD will lead to degradation of surface and groundwater quality in a regional ground water aquifer;

The use of water as proposed by HDPP is not in compliance with all applicable laws, ordinances and standards [including the standards set forth in the Judgment for a Physical Solution to cure the overdraft.

## **CONCLUSIONS AND RECOMMENDATIONS**

CEC Staff has concluded that allocation of SWP imported water supply to the project will cause a significant environmental impact unless the overdrafted conditions in the vicinity are mitigated to a level of non-significance. There is simply no assurance that can be done. In fact CEC Staff acknowledges that there is no mechanism to secure a long-term commitment of SWP water to the project. Given increased demand for this water, prolonged drought or court decisions regarding the adjudication, the project will not always be able to secure SWP water.

Based on the foregoing conclusions and recommendations and findings of fact, DRY COOLING should be mandated for certification of the HDPP, and the commission should implement a "Cumulative Impacts Analysis of the Potential Impacts of using SWP Water in any new Power Plant Project, based on the Highest and Best Use of this valuable resource that is owned by the Public.

Gary A. Ledford  
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(760)-240-1111  
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## STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	PROOF OF SERVICE
For the High Desert Power Project [HDPP]	)	
_____	)	

I Kathie Mergal declare that on \_\_\_\_\_, I deposited copies of the attached DIRECT TESTIMONY OF GARY A LEDFORD ON WATER, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

Signed original document plus 11 copies to the following address:

California Energy Commission  
Docket Unit  
1516 Ninth Street, MS 4  
Sacramento, CA 95814

In addition to the documents sent to the Commission Docket Unit, individual copies of all documents were sent to:

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Added 3/21/99  
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Brad Foster  
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### **Interested Organizations**

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I declare under penalty of perjury that the foregoing is a true and correct.

---

Kathie Mergal

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In Pro per

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	
For the High Desert Power Project [HDPP]	)	
	)	
_____	)	

**To the Mojave Water Agency and Water Master Board of  
Directors:**

**POSITION ON THE CONSUMPTIVE USE  
ISSUE OF 2 TO 1  
FOR THE  
HIGH DESERT POWER PROJECT**

Respectfully submitted:

September 15, 1999

\_\_\_\_\_  
GARY A. LEDFORD  
PARTY IN INTERVENTION  
IN PRO PER

**POSITION OF GARY A LEDFORD  
ON THE CONSUMPTIVE USE OF WATER AND THE  
REQUIREMENT THAT 100% CONSUMPTIVE USE OF ANY  
"NEW" USER REQUIRES "REPLACEMENT" WATER ON  
A 2 FOR 1 REPLACEMENT FACTOR TO ASSIST IN THE  
CURE OF THE OVERDRAFT**

While it is fully acknowledged that the ground water basins are in a state of severe and critical overdraft. None of the major municipal water producers have done anything to correct their individual overproduction of their wells, and apparently they do not intend to do so without a direct order from some court. Currently the MWA, along with the municipal producers are requesting that the Supreme Court hear their arguments on the Merits of the Judgment of the Physical Solution for the balancing of the basin[s] and curing the overdraft. The MWA's opening Brief to the California Supreme Court gives a of the problem of "overdraft":

"In 1990, water producers within the Mojave River Basin (an area of approximately 3,600 square miles and home to about a quarter of a million people) were confronted with an alarming water supply problem. Since the mid-1950's, the annual demand for water from the Basin' had exceeded the annual natural supply - resulting in a continuous and ever increasing "overdraft." **Rapid urban development in the 1980's had exacerbated the problem by dramatically increasing the demand on the already overdrafted system**". [bolding and underling added by Ledford for emphasis]

"By 1990 the cumulative overdraft on the Basin exceeded one million acre feet. If the situation is allowed to go unchecked, **the result will be ground subsidence, decreased water quality, increased costs to pump from constantly increasing depths, destruction of the underground storage capacity, and, ultimately, complete exhaustion of the underground supply**." [bolding and underlining added by Ledford for emphasis]

Clearly the City of Victorville and the Victor Valley Water District concurred with analysis as can be seen by their signature on the Brief

**Thomas P. Mc Guire for the City of Victorville and Victor  
Valley Water District**

The adjudication was started to determine vested water rights to "Natures Free Production", which the parties were advised was recharged into a common pool of the water. (Referred to in the adjudication as the TeaCup Theory). The "theory" was, since all producers in the

common pool were equally responsible for the overdraft, so everyone was to share equally in the cure. New production on the other hand was required to pay the full price to bring in new water into the basin[s]. The Fourth Circuit Court stated it clearly, "**Equity dictates that all persons in the same position be treated alike.**" (Civ. Code, § 3511 ["Where the reason is the same, the rule should be the same."].) Farmers were promised that over a five-year period they would be paid handsomely for their "**Free Production Allowance**". They could make more money selling or leasing their water than they could farming. Yet five years after the adjudication went into effect, many farmers still cannot sell their water, or if they can it is at bargain basement prices.

"The trial court Judgment is supposed to provide an equitable mechanism, a "Physical Solution," for allocating pumping rights and financing the purchase of imported water supplies essential to the ongoing enjoyment of all classifications of water rights in the Basin."

Within the past 90 days a long awaited study of the migrating water has been released by the USGS, at this writing the written report is still not available, but several public meetings have been made by the USGS. The result is that the vast majority of the municipal wells in the Alto Basin the where HDPP project is proposed, pump only ground water. There is no common pool. The Natural Recharge Water goes directly into the Main Stem of the Mojave River, in the Flood Plain Aquifer. That means that all of the natural water belongs only to the overlying producers, who enjoy this "**Free Production**" of nature's water. In order for a municipal producer to obtain a legal right to this water they must purchase the right. The Regional Aquifer is not naturally recharged.

In the case of the Victor Valley Water District, of the 33 wells they have only two that potentially are certain to be in the FloodPlain Aquifer, and both of them were drilled after 1990. CEC staff states that all "**. . VVWD's water supply is entirely from groundwater.**" Each and every year of production the Victor Valley Water District mines, all of their water from their wells. Each year the hydrographs indicate that their well levels go down.

The only way to cure the overdraft is by extensive recharge using imported State Water Project water..

### **1. Can the Energy Commission approve the use of State Water Project Water for "Cooling Towers" when the entire MWA entitlement will not cure the existing overdraft?**

If High Desert Power Project were allowed to Purchase 4,000 Acre feet of SWP water for Cooling Towers with a 100% of consumptive use rate, the High Desert Power Project will have a negative environmental impact on the cumulative ability of the MWA to cure the overdraft and manage the water and water resources of the High Desert. Approval the project in an area of severe and chronic overdraft by a Water Agency that itself has failed to mitigate its overproduction of its well fields will only continue to exasperate the issue.

The overdraft began in the Basin in the mid 1950's. As a result of the overdraft, well levels and water quality declined significantly throughout the Basin. The safe yield of the Basin has been estimated as approximately 75,000 acre feet annually. In 1990, the safe yield was exceeded by approximately 63,000 acre feet. The trial court found that all water producers had contributed to the overdraft.

"Overdraft" occurs if average annual consumptive use of water from a basin exceeds its safe yield plus any temporary water supply surplus. "Safe yield" is defined as the maximum quantity of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result. The phrase "undesirable result" refers to a gradual lowering of the groundwater levels resulting eventually in depletion of the supply. (*San Fernando, supra*, 14 Cal.3d at pp. 278-281.)

The existence of the overdraft has long been a matter of public knowledge. Bulletin 84 of the California Department of Water Resources, published in 1967, described in detail the nature and scope of the overdraft.

The existence of the overdraft has been acknowledged by every major hydrogeologic study of the area since the mid-1950s. If the overdraft is allowed to continue, it will result in a lowering of the groundwater table, increased pumping costs, decreased water quality, ground subsidence, damage to rare and endangered species, loss of native riparian habitat, and, ultimately, complete exhaustion of the water supply.

The dangers of overdraft have been recognized for many years in areas throughout California, as well as the need to address that problem in order to protect water rights and protect the public interest in the water supply.

Full importation of MWA's SWP entitlement of 75,800 acre feet of water would significantly lessen the amount of overdraft within the basin, however it is never anticipated that MWA will receive more than 70% of its total entitlement in any one year. Although the full 20% rampdown of the basin has been achieved, the MWA has failed to collect any money under the judgment to purchase supplemental water to recharge this chronically overdrafted basin. The VVWD, who proposes to supply water to this project, produces only ground water. This means that the VVWD is mining water that is not naturally recharged. Hydrographs demonstrate that VVWD well have continually gone down for a period of over 40 years.

In 1991, an Environmental Impact Report was prepared for the transition of George Air Force Base. That EIR identified substantial Environmental Impacts associated with the Development and Redevelopment of the Base and its surrounding property. MWA sued VVEDA and entered into a settlement agreement. That agreement states in part:

Section 5. Water Issues: With respect to the water issues. . . the Parties hereby agree as follows:"

"a. VVEDA shall comply with the California Environmental Quality Act ("CEQA"). . .and **shall evaluate each individual project to be undertaken** in connection with the implementation of the 1993 Redevelopment Plan and **which may in any way impact upon water resources, directly or indirectly**. For its growth inducing potential and its impact on local water resources. VVEDA shall not approve any project unless available water resources for the project are adequate to meet projected demand of the project."

"b. To the extent permitted by law, VVEDA shall seek to become a party in the Mojave River Adjudication, Riverside Superior Court Case No. 208568, if it becomes a water purveyor and in such event agrees to be bound by any judgement which is entered including any physical solution is finally agreed upon by the Parties in settlement of the water adjudication litigation"

In December of 1992 MWA required additional comments be added to the EIR:

At page 94: " . . .Of the total operation storage capacity, approximately 881,000 acre-feet remains in storage, with the remainder have been previously extracted."

At page 100: "The City and/or the purveyor should participate in the annual cost to the Mojave Water Agency for the purchase and delivery of imported supplemental water to offset the increase to overdraft with will result from this project."

"Delivery of imported water can be accomplished through the oversized "reach one" of the Morango Basin Pipeline, which is currently under construction. Reach one will include a turnout allowing the discharge of up to **36,000 acre feet of water per year for recharge to the Upper Mojave River near the Rock Springs Road Crossing**"

It is abundantly clear that MWA intended that all water coming into the basin, was going to used for direct recharge and that VVEDA would be required to comply with the terms of the judgement.

In a sworn declaration before the Superior Court for approval of the Interlocutory Judgment Mr. Larry testified, that in San Bernardino Case No: 247481, Judge Kruge found and held in 1988 that:

". . the MWA could not contract away a portion of its State Project Water Entitlement to entities within the Mojave River Basin **until it addressed and solved** {emphasis added} regional water management concerns"

In a deposition taken on October 6, 1994, Mr. Caouette testified when asked if VVEDA would get a "Free Production Allowance" in the adjudication? He replied:



"If VVEDA became a new producer and water purveyor, I don't think they would have a free production allowance. **They would all be new production subject to assessment.**"

In the same deposition, when asked if the Victor Valley Water District had available water for new developments, including VVEDA, Mr. Caouette testified:

"Once again, the terms of the judgment which would required them to purchase **replacement water.**" Page 27 lines 14 - 15.

"Water that would be available to them under the Stipulated Judgement through the purchase of **replacement water** above their free production allowance." Page 32 lines 2-5.

"Any new development over the overdraft would be - - **would result in an increase to the overdraft**" page 64 lines 14 - 16.

In the same deposition when asked how will balance be achieved, Mr. Caouette testified:

"Through the **replacement water** purchase". Page 118 lines 10 - 16

Replacement Water Assessments is described in the Judgement as follows:

"Replacement Water Assessments shall be levied against each Producer on account of such Producer's Production, after any adjustment pursuant to Paragraph 24(q), in excess of such Producer's share of the Free Production Allowance in each subarea during the prior Year."

Paragraph 24(q) states:

"If the Watermaster determines, using the Consumptive Use rates set forth in Exhibit "F", that a new Purpose of Use of any Producer's Production for any Year has resulted in a higher rate of Consumption than the rate applicable to the original Purpose of Use of the Producer's Production in the Year for which Base Annual Production was determined, Watermaster shall use a multiplier (1) to adjust upward such production for the purpose of determining the Producer's Replacement Water Assessment and, (2) to adjust upward the Free Production Allowance portion of such Production for the purpose of determining the Producer's Make-up Water Assessment. The multiplier shall be determined by dividing the number of acre feet of Consumption that occurred under the new Purpose of Use by the number of acre feet of Consumption that would have occurred under the original purpose of use for the same Production." Page 33 - 34 of the Judgement

## **2. Do existing taxpayers own the existing entitlement to all of the MWA water unless and until the overdraft is cured?**

### **The MWA's mission as provided under the ACT is stated clearly in information published by the Agency:**

"The Mojave Water Agency (MWA) was founded July 21, 1960, due to concerns over declining groundwater levels. The Agency was created for the explicit purpose of doing any and every act necessary, so that sufficient water may be available for any present or future beneficial use of the lands and inhabitants within the Agency's jurisdiction."

As a state water contractor, MWA is entitled to receive an annual allotment of up to 75,800 acre feet of water from the State Water Project via the California Aqueduct.

"The imported water supply is crucial to the area's survival, because local aquifers have been in overdraft since the early 1950's, according to recent studies. For the past four decades, residents have been using more water than is replaced naturally."

The Agency's essential mission was strongly reaffirmed with the conclusion of the Mojave River Adjudication. The Court's ruling notes that the Agency area continues to be in severe overdraft. The Court ordered the Agency to seek sources of water, including supplemental water, and to deliver that water in the most effective fashion to ensure the quality of life within its boundaries. The judgment also mandated the MWA to continue its traditional role of encouraging conservation.

### **MOJAVE BASIN AREA WATERMASTER**

A "Watermaster" is a person or persons appointed by a Court to administer the terms of a Court Judgment. The Mojave Water Agency was appointed as the initial Watermaster by the Riverside County Superior Court to implement the Mojave Basin Area Judgment, which apportioned available water production rights within the overdrafted Mojave River Basins. The Watermaster implements a physical solution developed for the adjudication entered by the Court. . "

### **What are MWA Debt-1 and MWA Debt-2 on my property tax bill?**

The Mojave Water Agency (MWA) has the authority granted under Section 97-16 of the California Water Code to levy property taxes, collected through the San Bernardino County tax rolls. The taxes collected are mostly used to pay back the bonds and notes issued by the State of California to build the State Water Project (SWP) including the California Aqueduct and to the pay the Agency share of SWP operating costs.

The first tax, MWA Debt-1, is permanently set at .1125 cents per \$100 of assessed valuation of land only. The tax rate can never rise on this particular

tax; however, the amount of tax can rise based on any increase in assessed valuation of your property. This tax helps to fund the capital, interest, transportation and construction components of the State Water Project charges.

The second tax, MWA Debt-2, is levied to supplement the first tax assessment, pay Agency debt service and to also fund the MWA administration. This tax rate has no cap, and the rate can be raised by a majority vote of Board of Directors. It is currently set at .055 cents per \$100 of assessed valuation on land and improvements. These funds are used mostly for funding additional State Water Project costs for operations, repairs and maintenance, Agency water purchases, Agency Administration, and the debt incurred to construct facilities and pipelines and to purchase additional entitlement water. (Prior to 1997 the Agency was only entitled to purchase 50,800-acre feet of water from the State Water Project. In 1997, the Agency purchased the right to an additional 25,000-acre feet of water, giving the Agency the capability to purchase and have delivered 75,800-acre feet of water. COP's were issued to pay these costs and their debt service is being paid from MWA Debt-2.)

**Why do I pay taxes to the Mojave Water Agency, if I get my water from a well or a water company?**

MWA Debt-1 and MWA Debt-2 property taxes are assessed on all property within the Mojave Water Agency boundaries. All property within the 4,900 square miles of the Agency boundaries benefits from the Agency's ability to import water. **The Agency imports water through the California Aqueduct to recharge the groundwater from which local water companies and other well owners derive well water for all uses including domestic, agriculture and industrial.**

**3. If "Banking" were approved would HDPP have to Bank two acre feet of water for each acre foot to be consumed in the Cooling Towers, in order to equitably comply with the intent of the Physical Solution, wherein all "Producers" must buy Replacement Water on a two for one basis?**

While this issue could be the subject of much debate, the equitable principals of the adjudication was that every producer be treated alike. If the VVWD is allowed to take SWP water for an independent 100% consumptive use project, this in and of itself is precedent setting and would prevent the ability of the MWA to fulfill its obligations under the terms of the judgement. The argument that MWA is not purchasing its entitlement of water anyway and therefore someone else should be allowed to purchase it only flies in the face of the facts that to the MWA has not fulfilled its mandate. It was said clearly by the counsel for the City of Barstow. **"Water is a matter of money in California"**

The issue before the commission is essentially mute if the commission can determine that MWA cannot meet its obligations to cure the overdraft even using all of its entitlement water. On the other hand if the commission is required to determine if the "laws, rules and ordinances are being complied with, then this provision must be studied and addressed as a part of the environmental analysis.

**4. Does the use of SWP Water for the 100% Consumptive use of water comply with the California Constitution Article X, Section 2, referring to Highest and Best Use?**

*The California Constitution Mandates That Beneficial Uses Of Water Resources Be Maximized!*

The overriding policy of the State of California is to maximize the beneficial uses of its scarce water resources. This policy is expressed in Article X, Section 2, of the California Constitution, which states in pertinent part:

"It is hereby declared that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare...."

The fundamental issue of the overdrafted water basin has not been addressed. The MWA cannot supply water to HDPP except on an annual basis from surplus water after curing the overdraft. The MWA ACT, its adopted Water Management Plan prepared by the Bookman Engineering Firm and the Physical Solution of water rights mandates that the basins be brought into balance.

Gary A. Ledford  
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(760)-240-1111  
Fax (760)-240-3609

In Pro per

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	TIME ESTIMATE
The Application for Certification	)	Date: October 7 <sup>th</sup> and 8 <sup>th</sup> 1999
For the High Desert Power Project [HDPP]	)	Time: 10:00 a.m.
	)	Place: City of Victorville Council
_____	)	Chambers

GARY A LEDFORD, INTERVENOR, hereby requests that the Parties in this case take note that the time estimate for my direct and my cross-examination is at least two days assuming there is cooperation and witness are available to testify. Consideration should be given to providing an additional two days of testimony. The Water and Water related issues are complex, and Staff's testimony alone citing numerous reports and studies is over 50 pages. It is unknown the time estimates for other parties on these issues.

My next available days will be after October 24<sup>th</sup> 1999, as I have a scheduled hunting trip with my son that cannot be changed.

Dated: September \_\_\_\_, 1999

\_\_\_\_\_  
Gary A. Ledford

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(760)-240-1111  
Fax (760)-240-3609

STATE OF CALIFORNIA

Energy Resources Conservation  
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In the Matter of:	)	Docket No. 97-AFC-1
	)	
	)	
The Application for Certification	)	PROOF OF SERVICE
For the High Desert Power Project [HDPP]	)	
_____	)	

I Kathie Mergal declare that on \_\_\_\_\_, I deposited copies of the attached **SUBPOENA**, in the United States mail in Apple Valley California with first class postage thereon fully prepaid and addressed to the following:

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Brad Foster  
3658 O'Banion road  
Yuba City, CA 95993



### **Interested Organizations**

Southern California Edison  
Attn: Ted H Heath, P.E.  
2131 Walnut Grove Avenue  
Rosemead, CA 91770

I declare under penalty of perjury that the foregoing is a true and correct.

---

Kathie Mergal

Gary A. Ledford  
11401 Apple Valley Road  
Apple Valley, California 92308  
(760)-240-1111  
Fax (760)-240-3609

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STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
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	)	REQUEST FOR SUBPOENA
The Application for Certification	)	Date: October 7 <sup>th</sup> and 8 <sup>th</sup> 1999
For the High Desert Power Project [HDPP]	)	Time: 10:00 a.m.
	)	Place: City of Victorville Council
_____	)	Chambers

GARY A LEDFORD, INTERVENOR, hereby requests the issuance of a subpoena by the Commission.

SUBPOENA:

- A) The name of the witness to be called to testify is **NORMAN CAOUETTE**
- B) Mr. Norman is the Director of Planning and Resource Development of the Mojave Water Agency and responsible to provide evaluate the CEQA impacts associated within projects within the boundries of the MWA. He also responsible responsible to propose conditions that mitigate impacts of projects that the MWA is responsible for. [See Declaration]
- C) I have made attempts to procure the attendance of the witness and he advised me that the CEC did not have subpoena authority over MWA Staff, because MWA had not intervened as a Party. In the Practice and Procedures Guide, it states that " A subpoena may be used to command the attendance of a witness . . . who is not a party to the proceedings."

Dated: September \_\_\_\_, 1999

\_\_\_\_\_  
Gary A. Ledford

## **DECLARATION OF GARY A. LEDFORD**

I, Gary A. Ledford, declare as follows:

1. I am citizen and resident of the State of California, Town of Apple Valley. For at least the last fifteen years I have paid taxes on real estate situated in the High Desert and under the jurisdiction of the Mojave Water Agency (hereinafter "MWA").
2. I intervened in 97-AFC-1 and am a bonafide party.
3. I requested that Mr. Norman Caouette, the Director of Resource Development of the Mojave Water Agency, be available to testify in this matter, on the two designated days for Water.
4. Mr. Caouette advised me on September 13<sup>th</sup> 1999, at a Workshop at the MWA Headquarters, that the Commission had no authority over MWA and could not compel the attendance of MWA personnel to testify.
5. Since it is the MWA that the HDPP is supposedly relying on to supply water for their project, it is incumbent that MWA make available the key personnel that have knowledge about the potential ability of the MWA to meet its commitments under the Adjudication to recharge the water basins, as well as other pertinent data.
6. Mr. Norman is a key witness to testify and be examined by all parties to the proceeding..

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this \_\_\_\_\_ day of September 1999, at Apple Valley, California.

---

Gary A. Ledford  
Taxpayer

Gary A. Ledford  
11401 Apple Valley Road  
Apple Valley, California 92308  
(760)-240-1111  
Fax (760)-240-3609

STATE OF CALIFORNIA

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	)	
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For the High Desert Power Project [HDPP]	)	
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### **Interested Organizations**

Southern California Edison  
Attn: Ted H Heath, P.E.  
2131 Walnut Grove Avenue  
Rosemead, CA 91770

I declare under penalty of perjury that the foregoing is a true and correct.

---

Kathie Mergal

Gary A. Ledford  
11401 Apple Valley Road  
Apple Valley, California 92308  
(760)-240-1111  
Fax (760)-240-3609

In Pro per

STATE OF CALIFORNIA

Energy Resources Conservation  
And Development Commission

In the Matter of:	)	Docket No. 97-AFC-1
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	)	REQUEST FOR SUBPOENA
The Application for Certification	)	Date: October 7 <sup>th</sup> and 8 <sup>th</sup> 1999
For the High Desert Power Project [HDPP]	)	Time: 10:00 a.m.
	)	Place: City of Victorville Council
_____	)	Chambers

GARY A LEDFORD, INTERVENOR, hereby requests the issuance of a subpoena by the Commission.

SUBPOENA:

- A) The name of the witness to be called to testify is **DR. J. PHYLLIS FOX**
- B) Dr. Fox is a designated "Expert Witness" for CURE, in many siting cases for the CEC. As an Expert CURE engages Dr. Fox to conduct various studies, in the HDPP case, Studies, on Air Quality, Hazardous Substances, Well Interference, Dry Cooling as well as other research. The "Studies" of Dr. Fox have been used on and relied on by "Staff" and in this case and have been cited as references as to various conclusions. Even if they had not been cited, they have "Docketed" so that other members of the Public could review them and rely on their expert character. [See Declaration]
- C) I expected that CURE would provide Dr. Fox as a Witness, but received a letter that they would not. See Exhibit "A".
- D) Dr. Fox is expected to be a Key witness. In the Practice and Procedures Guide, it states that " A subpoena may be used to command the attendance of a witness . . . who is not a party to the proceedings."

Dated: September \_\_\_\_, 1999

\_\_\_\_\_  
Gary A. Ledford



**DECLARATION OF  
GARY A. LEDFORD**

I, Gary A. Ledford, declare as follows:

1. I am citizen and resident of the State of California, Town of Apple Valley. For at least the last fifteen years I have paid taxes on real estate situated in the High Desert and under the jurisdiction of the Mojave Water Agency (hereinafter "MWA").
2. I intervened in 97-AFC-1 and am a bonafide party.
3. I placed Dr. Fox on my witness list for cross-examination of Water and Water Related Topics, such as Dry Cooling.
4. Dr. Fox has prepared two studies on Water and Water Related Matters in this case.
5. Staff's testimony has or should have cited information contained in these reports.
6. The Reports have been docketed and distributed to the Public in this case.
7. I was Notified by attorney Lizanne Reynolds, that Dr. Fox would not testify.
8. Dr. Fox is a key witness to testify and be examined by all parties to the proceeding including Staff.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this \_\_\_\_\_ day of September 1999, at Apple Valley, California.

---

Gary A. Ledford  
Taxpayer

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STATE OF CALIFORNIA

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I declare under penalty of perjury that the foregoing is a true and correct.

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GARY A LEDFORD, INTERVENOR, hereby requests the issuance of a subpoena by the Commission.

SUBPOENA:

- A) The name of the witness to be called to testify is **JOHN NORMAN**
- B) Mr. Norman is the General Manager of the Mojave Water Agency and responsible to provide information to the commission and proposed conditions that addresses the concerns of the Mojave Water Agency, its constituents, and approved actions by its Board of Directors. [See Declaration]
- C) I have made attempts to procure the attendance of the witness and although he has expressed willingness, he has couched it with the possibility that counsel to the MWA may not let him testify.
- D) Further, Mr. Caouette, another witness and key staff member of the MWA advised me that the CEC did not have subpoena authority over MWA Staff, because MWA had not intervened as a Party. In the Practice and Procedures Guide, it states that " A subpoena may be used to command the attendance of a witness . . . who is not a party to the proceedings."

Dated: September \_\_\_\_, 1999

\_\_\_\_\_  
Gary A. Ledford

**DECLARATION OF  
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2. I intervened in 97-AFC-1 and am a bonafide party.
3. I requested that Mr. John Norman, General Manager of the Mojave Water Agency, be available to testify in this matter, on the two designated days for Water. Although Mr. Norman indicated he had no problem with being available, he would not make a firm commitment to be available. There was indication that the Commission had no authority over MWA and could not compel the attendance of MWA personnel to testify.
4. Since it is the MWA that the HDPP is supposedly relying on to supply water for their project, it is incumbent that MWA make available the key personnel that have knowledge about the potential ability of the MWA to meet its commitments under the Adjudication to recharge the water basins, as well as other pertinent data.
5. Mr. Norman is a key witness to testify and be examined by all parties to the proceeding..

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STATE OF CALIFORNIA

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Attn: Ted H Heath, P.E.  
2131 Walnut Grove Avenue  
Rosemead, CA 91770

I declare under penalty of perjury that the foregoing is a true and correct.

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Kathie Mergal